

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

FILED 12 FEB 13 3:37
CLERK OF COURT
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI

UNITED STATES OF AMERICA)

Plaintiff,)

V)

Ricardo McHORNE, et al.,)

Defendant.)

CASE NO. 00-6311-CR-HUCK

**DEFENDANT'S MOTION FOR REMOVAL
OF PREJUDICIAL STATEMENT IN INDICTMENT**

COMES NOW the Defendant, Ricardo McHORNE, by and through undersigned counsel, and moves this Honorable Court for an Order to delete the statement in the indictment, in three (3) areas, referring to the Defendant's previous conviction.

Rules of Evidence, in the Fed. R. Crim.P., 404(b), "(e)vidence of other crimes, wrongs, or acts is not admissible ...". The Government has placed in the indictment, three (3) separate times, the extraneous fact of the Defendant McHorne's prior conviction. We would respectfully request any reference to any prior conviction be stricken from every area it appears. (i.e.: Count 3, page 15, paragraph #6; Count 36, page 28; Money Laundering Forfeiture Section, page 36, paragraph #1).

The Supreme Court clearly stated in Apprendi v New Jersey, 147 L.Ed. 2d 435 (2000), that all 'elements of the offense' must be charged in the indictment and ruled on by a jury. However, the High Court made it clear that this was not the case regarding

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prior offenses.

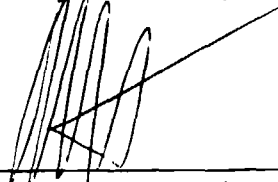
HELD: The Constitution requires that any fact that increases the penalty for a crime beyond the prescribed statutory maximum, other than the fact of a prior conviction, must be submitted to a jury and proved beyond a reasonable doubt. (emphasis supplied).

The Supreme Court has ruled that prior convictions are not 'elements of the offense' and it is not required that the Government charge a prior conviction in the indictment, moreover, Fed. R. Crim. P. 404(b) does not allow the Government to taint the Defendant's character by evidencing a prior bad act.

We respectfully request of this Honorable Court that these references be stricken from the indictment as they serve no purpose, other than an inappropriately inflammatory one.

The undersigned counsel certifies that he has conferred with Assistant U.S. Attorney MICHAEL DITTO, opposing counsel, in a good faith effort to resolve by agreement the subject matter of this Motion.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Guy Spiegelman', is written over a horizontal line.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion was mailed this February 12, 2001 to the following:

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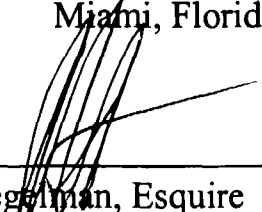
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